IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL No 558 of 1996

in

SPECIAL CIVIL APPLICATIONNo 4370 of 1995

with

CIVIL APPLICATION NO. 4759 OF 1996

For Approval and Signature:

HON'BLE MR.JUSTICE B.J.SHETHNA
and
HON'BLE MR.JUSTICE SHARAD D.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

DEVENDRA CHHOTALAL BRAHMBHATT

Versus

THE STATE OF GUJARAT

Appearance:

1. LETTERS PATENT APPEAL No. 558 of 1996

MR GIRISH PATEL for Appellant No.

NANAVATY ADVOCATES for Appellant No.

NOTICE SERVED for Respondent No. 1-4

NOTICE UNSERVED for Respondent No. 5

CORAM : HON'BLE MR.JUSTICE B.J.SHETHNA
and
HON'BLE MR.JUSTICE SHARAD D.DAVE

Date of decision: 24/11/2004

ORAL JUDGEMENT

(Per : HON'BLE MR.JUSTICE B.J.SHETHNA)

#. The appellant-petitioner was working as a workcharge clerk / junior clerk with the respondents. He has challenged his impugned order of transfer dated 25.05.1995 by way of Special Civil Application No.4370 of 1995 on the several ground including the ground of malafide. It is the case of the appellant-petitioner that he was transferred from Surat district to Nadiad which is at a distance of 400 kms. When his Special Civil Application no. 4370 of 1995 placed before M.R.Call, J (as he then was) following order was passed.

"....The learned counsel for the petitioner has argued that the petitioner is a Junior Clerk and has been transferred from Surat District to Nadiad, which is in Kheda District. The place from where the petitioner has been transferred is about 400 kms. away from his present posting. The order is challenged on the ground of malafides. The learned Assistant Government Pleader may seek instructions from the Government as to whether the Government is ready and willing to accommodate the petitioner in the District adjoining to Surat or in Surat District itself at the Station which may be nearest to his present place of posting. The learned Assistant Government Pleader, therefore, seeks time. Put upon 27th July, 1995 as prayed for....."

Thereafter, matter had come up before C.K.Thakkar, J (as he then was) on 01.03.1996 and on the statement being made by the learned A.G.P. for the respondent, the petition was disposed of. It is a brief order which is reproduced as under :

"Special Civil Application No. 4370 of 1995

Coram : C.K.Thakkar, J (1st March, 1996)

ORAL ORDER

This petition is filed against an order of transfer. It appears that the petitioner is transferred at a distance of 400 kms. Taking into account that fact, this court (Coram : M.R.Calla, J), passed the following order on July 21, 1995 :

".... The learned counsel for the petitioner has argued that the petitioner is a Junior Clerk and has been transferred from Surat District to Nadiad, which is in Kheda District. The place from where the petitioner has been transferred is about 400 kms. away from his present posting. The order is challenged on the ground of malafides. The learned Assistant Government Pleader may seek instructions from the Government as to whether the Government is ready and willing to accommodate the petitioner in the District adjoining to Surat or in Surat District itself at the Station which may be nearest to his present place of posting. The learned Assistant Government Pleader, therefore, seeks time. Put upon 27th July, 1995 as prayed for....."

Mr.Gharania, learned counsel for the respondents, states that in the light of the observations made by this Court in the above order, the authority has considered that aspect and he produces on record a decision said to have been taken by the Government, which is communicated to the office of the Government Pleader on July 29, 1995. In the said communication, it was mentioned that the petitioner will be accommodated either in Bharuch or in Baroda district. In view of the above communication, in my opinion, this petition does not survive and requires to be disposed of and accordingly, it is dismissed. Notice is discharged. No order as to costs.

The authority will take into account the fact that the petitioner belongs to Dharoi.

1st March, 1996 (C.K.Thakkar,J)"

#. M.C.A.No.615 of 1995 filed in S.C.A.No.4370 of 1995 seeking review of His Lordships order dated 01.03.1996 passed on S.C.A. No. 4370 of 1995 was also dismissed by His Lordships on 27.09.1996 by a brief order which is as under :

"This Misc.Civil Application is filed for review of the order dated 01.03.1996 in Special Civil Application No. 4370 of 1995.

The learned counsel for the applicant states this MCA was placed before me on 10th May 1996 and it was rejected stating therein that no ground had been made out for reviewing the order. In view of the fact that papers were misplaced, the applicant could not get the copy thereof. Once again the same order is passed and no ground for review has been made out. Hence, MCA is rejected. No order as to costs.

Dt.27.9.1996 (C.K.Thakker,J)

#. It is contended in para 4 of this Letters Patent Appeal as under:

"The appellant challenged the impugned transfer order by filing Special C.A. mentioned hereinabove on various legal and constitutional grounds. The petition came up for hearing before His Lordship, Mr.Justice C.K.Thakkar who was pleased to pass the judgment and order dated 1.3.1996 dismissing the Special C.A. A true copy of the order is annexed hereto and marked as Annex. `A'."

Annexure `A' is not the order dated 01.03.1996 passed by the learned Single Judge dismissing the main Special Civil Application. It is an order dated 27.09.1996 passed by the learned Single Judge dismissing review petition filed in main Special Civil Application. Thus, without placing main order passed by the learned Single Judge dismissing Special Civil Application, the same is sought to be challenged in this Special Civil Application which was filed in 1996 itself.

#. Though the appellant - petitioner was challenging his impugned order of transfer passed in 1995 and though his appeal was filed in 1996, surprisingly the appeal was moved for orders for the first time in April, 2004 and the Division Bench of this Court ordered to issue notice on 02.04.2004. Be that as it may.

#. Hon'ble Supreme Court has time and again said that High Courts should be slow in interfering with transfer orders. When the learned Single Judge of this Court has

not thought it fit to exercise its extraordinary jurisdiction under Article 226 of the Constitution and interfere with the impugned order of transfer passed way back in 1995, then there is no question of entertaining this appeal against such order of transfer and the dismissal of his main petition after a period of more than nine years. Thus, on this ground and on the grounds stated hereinabove, this appeal is required to be dismissed and accordingly it is dismissed. Notice discharged. No costs.

#. In view of the order passed in the main special civil application, civil application no.4759 of 1996 stands disposed of accordingly.

(B.J.SHETHNA, J)

(SHARAD D DAVE, J)

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